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17
18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION
21

22 Consumer Financial Protection
Bureau,

23
24 Plaintiff,

25 v.

26 Dmitry Fomichev,

27 Defendant.
28

Case No. 2:16-cv-02724-PSG(Ex)

**STIPULATION OF DISMISSAL WITH
PREJUDICE**

Hon. Philip S. Gutierrez

1 Plaintiff and defendant Dmitry Fomichev (the Parties) stipulate to dismissal
2 with prejudice of this case under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), for
3 the following reasons.

4 The Bureau brought this case on April 21, 2016 against Dmitry Fomichev for
5 his alleged actions relating to D and D Marketing, Inc., d/b/a T3Leads (T3).¹ The
6 Bureau alleges that (i) T3 engaged in unfair and abusive practices in connection with
7 its receipt and conveyance of consumer information; and (ii) Dmitry Fomichev
8 violated § 1036(a)(3) of the Consumer Financial Protection Act of 2010
9 (CFPA), 12 U.S.C. § 5536(a)(3), by substantially assisting T3's unlawful conduct.
10 The Bureau sought to obtain injunctive and monetary relief against Fomichev.

11 Based upon information received from Fomichev's undersigned counsel and
12 from public sources, the Bureau understands that (i) state court criminal complaints
13 were filed against Fomichev on December 11, 2017 (Case No. LA087362) and
14 February 6, 2018 (Case No. LA087773); and (ii) as of February 4, 2018, Fomichev
15 has been in the custody of the Los Angeles County Sheriff's Department, without
16 bail, at the direction of the United States Marshal's Service.

17 The Parties' respective understandings of Fomichev's state-court legal
18 proceedings also are based in part on a joint Status Report filed in a federal criminal
19 case against Fomichev in which a jury convicted Fomichev of four counts of making
20 false statements or misrepresentations to the United States government in violation
21
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23
24 ¹ The Bureau brought a related case in this Court against T3, Marina Demirchyan,
25 and Grigor Demirchyan on December 15, 2015 (*Consumer Financial Protection*
26 *Bureau v. D and D Marketing, Inc., d/b/a T3Leads, et al.*, Case No. 2:15-cv-9692-
27 PSG(Ex) (C.D. Cal.)). The cases are consolidated only for pretrial purposes, and the
28 Bureau does not dismiss the other case.

1 of 18 U.S.C. § 1546(a) and 18 U.S.C. § 1001.² According to that Status Report,

2 [a]fter trial of [the federal criminal] matter, during the pendency of the
 3 appeal, defendant DMITRY FOMICHEV (“FOMICHEV”) was charged
 4 in two separate state court cases, LA087362 and LA087773, with various
 5 state offenses, including Assault with a Deadly Weapon, Vandalism, and
 6 Arson. The charges resulted from a psychotic break FOMICHEV suffered
 7 beginning in 2017, during which he exhibited paranoid delusions and
 8 auditory hallucination, including command hallucinations. FOMICHEV
 9 was under the care of a psychiatrist at the time of his state arrests. The
 10 Honorable Joseph Brandolino, Judge of the Los Angeles County Superior
 11 Court of the State of California, found FOMICHEV Not Guilty by Reason
 12 of Insanity, pursuant to California Penal Code Section 1026, in both cases.
 13 On November 5, 2018, Judge Brandolino ordered FOMICHEV committed
 14 to Patton State Hospital for six months for treatment and evaluation. As of
 15 a status conference held in state court on December 4, 2018, FOMICHEV
 16 had not yet been transported to the state hospital and was still housed at
 17 Men’s Central Jail. Another status conference is scheduled before Judge
 18 Brandolino on January 7, 2019, regarding the status of FOMICHEV’s
 19 transportation. Defense counsel cannot currently communicate with
 20 FOMICHEV and FOMICHEV is currently unable to participate in his
 21 defense.³

22 The federal criminal case, which was remanded from the Ninth Circuit to the
 23 district court on August 8, 2018, is stayed by district court order “until such time as
 24 defendant DMITRY FOMICHEV is deemed competent and released from state
 25 custody.”⁴

26 According to Fomichev’s undersigned counsel, Fomichev is currently housed
 27 at the Men’s Central Jail in Los Angeles, California while he awaits transfer to a
 28 California mental health facility per Judge Brandolino’s state-court order described
 above. Reportedly, Fomichev’s transfer has not yet occurred and will not occur until

25 ² *United States of America v. Dmitry Fomichev*, No. 2:13-cr-00185-SVW (C.D. Cal),
 26 on remand from *United States v. Fomichev*, 899 F.3d 766 (9th Cir. 2018).

27 ³ *Id.*, ECF No. 137 at 1-2.

28 ⁴ *Id.*, ECF No. 138 at 1.

1 the California Department of State Hospitals determines which facility to transfer
 2 Fomichev to, a bed becomes available in the assigned facility, and the appropriate
 3 administrative paperwork is properly transferred to that facility.

4 Because of Fomichev's current legal and mental status, as reported, and
 5 because Fomichev appears to have been uninvolved in T3's operations since
 6 approximately July 2014, the Bureau is amenable to dismissal with prejudice of this
 7 case. The Parties agree also to file in the Ninth Circuit, forthwith, a stipulation of
 8 dismissal of the pending interlocutory appeal, *CFPB v. Dmitry Fomichev*, No. 17-
 9 55710 (9th Cir.).

10 Fomichev waives any claim he may have under the Equal Access to Justice
 11 Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the filing date of
 12 this stipulation.

13 Each Party agrees to bear its own costs and expenses, including, without
 14 limitation, attorneys' fees, relating to this case and the interlocutory appeal, *CFPB v.*
 15 *Dmitry Fomichev*, No. 17-55710 (9th Cir.).

16
 17 Dated: March 4, 2019

18
 19 Respectfully submitted,

20
 21 Bureau of Consumer Financial
 22 Protection

23 /s/ Barry Reiferson
 24 Barry Reiferson (pro hac vice)
 25 Attorney for Plaintiff

Soltman, Levitt, Flaherty & Wattles LLP

/s/ Philip E. Black
 Philip E. Black, SBN 112779
 Attorney for Defendant,
 Dmitry Fomichev

1 Attestation:

2 All other signatories listed, and on whose behalf the filing is submitted, concur in
3 this filing's content and have authorized this filing.

4
5 /s/ Barry Reiferson

6 Barry Reiferson
7 Attorney for Plaintiff
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